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JOHN W.

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APPEARANCES:

MCHUGH HECKMAN SM
& LEONARD, ESQ.
Attorneys for Petitione
80 Pine Street
New York, New York

DOMINICK TOCCI, ESQ.
Attorney for Local 129
112 State Street
Albany, New York 122

THOMAS W. GLEASON, E
Attorneys for Atlantic
District ILA
One State Street Plaz
New York, New York

NEAL P. MCCURN, D.J

MEMORANDU

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The facts lea
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McGrath's petition requests the court to compel arbitration and to enjoin and restrain the union in refusing to service the AENEAS as any other vessel carrying cargo to and from the Soviet Union.

A

Jurisdiction on this Court is conferred by Title 29 U.S.C. § 185 and Title 28 U.S.C. § 1331. The motion to compel arbitration is made pursuant to the Federal Arbitration Act Title 9 U.S.C. paragraph 4.

It is McGrath's contention that the refusal of the Union to work the AENEAS is covered by Section 11 of the Agreement as a "dispute or controversy" which has arisen "as to interpretation or application of . . . the provisions of this agreemnt" which "shall be referred to an arbitration committee for adjustment or decision". McGrath further contends that the last sentence of paragraph 11 which provides that "pending such adjudication or decision the men shall continue to work" is in the nature of a no-strike clause and based thereon seeks injunctive relief pending arbitration. McGrath also contends that the language set forth in the body of the agreement (Pg. 1) as to the obligations of the Union representative that "he shall handle any dispute between the parties and resolve such disputes on the pier level, he shall present them for arbitration through the arbitration and grievance machinery, and see that there is no stoppage of work" is further basis for the relief sought herein.

McGrath concedes that the Union's decision to refuse to load grain bound for Russia, as a means of expressing its displeasure with the Soviet aggression in Afghanistan, is not in the nature of a dispute with management over the terms and conditions of the agreement, but contends that the Union's manner of implementation of the decision, i.e.,

the stoppage of work in order to carry out that decision, does involve a dispute covered by the agreement. McGrath says that the right of management to compel the Union to work as against the right of the Union to refuse work is a dispute and as such is subject to arbitration.

The Union concedes that it is bound under the terms of the agreemnt to arbitrate a dispute between McGrath and itself as to the terms or conditions of the contract, but contends that there is no dispute with McGrath herein but rather with the Soviets and that that dispute is not arbitrable. It asserts that what we have here are two disputes—the first, and the basis for its refusal to work, is its disagreement with the Russian aggression; the second, its disagreemnt with McGrath over its right to so refuse.

B

It has, of course, been affirmativly established that the arbitration of labor disputes is highly favored. In *United States Steel Workers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960), the Supreme Court articulated the desirability of the arbitration of differences between labor and management:

> The present federal policy is to promote industrial stabilization through the collective bargaining agreement. A major factor in achieving industrial peace is the inclusion of provision for arbitration of grievances in the collective bargaining agreement. . . . Here arbitration is the substitute for industrial strife . . . arbitration of labor disputes under the collective bargaining agreements is part and parcel of the collective bargaining process itself . . . 363 U.S. at 578 (citations omitted).

The Court went on to discuss the processes afforde the Labor Law when it stated:

> The Congress, however, has by Section 301 of Labor Management Relations Act, assigned the Co the duty of determining whether the reluctant p has breached his promise to arbitrate. For arb tion is a matter of contract and a party canno required to submit to an arbitration any dispute w he has not agreed so to submit. Yet, to be consis with congressional policy in favor of settlemen disputes by the parties throu;h the machinery of a tration, the judicial inquiry under Section 301 r be strictly confined to the question whether the luctant party did agree to arbitrate the grievanc did agree to give the arbitrator power to make award he made. An order to arbitrate the partic grievance should not be denied unless it may be with positive assurance that the arbitration claus not susceptible of interpretation that covers the serted dispute. Doubts should be resolved in f of coverage." 363 U.S. at 582-583.

In *United Steel Workers* the Court further observed the question of arbitrability is for the courts to decid

> The question here, therefore, is whether there is a pute covered by the agreement which should be submi to arbitration pursuant to the terms of the agreem When a dispute is not one which the parties agree to a trate, there can be no requirement to arbitrate and

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[1] "Where the assertion by the claimant is that the partie cluded from court determination not merely the decision o merits of the grievance but also the question of its arbitrab vesting power to make both decisions in the arbitrator, the c ant must bear the burden of a clear demonstration of purpose." 363 U.S. 583, Footnote 7.

injunction. *Gateway Coal Co.* v. *Mine Workers,* 414 U.S. 368, 380, 94 S.Ct. 629, 38 L.Ed.2d 583 (1974).[2]

C

There are two disputes here, one with the Russians- the basis of the Union's refusal to work; the other wit management over the Union's right to refuse to work. is clear that the parties to this labor-management contra did not agree to arbitrate the former. Did they agree arbitrate the latter?

The Union concedes that if there was a broad no-strik clause in the contract, then its right to strike to enforc its position on the first (Russian) dispute would be subje to arbitration, but in the absence of such a clause, th Union claims it is not subject to arbitration.

It claims these distinctions were set forth and recognize by the Supreme Court of the United States in *Buffal Forge Co.* v. *United Steel Workers of America, AFL-CIO* 428 U.S. 397, 96 S.Ct. 3141 (1976), wherein the Cou observed:

> ". . . the strike was not *over* any dispute betwee the Union and the employer that was even remotel subject to the arbitration provisions of the contrac The strike at issue was a sympathy strike in suppo of sister unions negotiating with the employer; neith its causes nor the issue underlying it was subject t the settlement procedures provided by the contra between the employer and the respondents. The strik had neither the purpose nor the effect of denying evading an obligation to arbitrate or of depriving th employer of his bargain. Thus had the contract n

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[2] "No obligation to arbitrate a labor dispute arises solely b operation of law. The law requires a party to submit his grievan to arbitration only if he has contracted to do so." 414 U.S. 36 373.

> contained a no-strike clause or had the clause excluded sympathy strikes, there would hav possible basis for implying from the existe arbitration clause a promise not to strike have been violated by the sympathy stri case." (citation omitted) 428 U.S. at 407, 4

It should be noted that in *Buffalo Forge* the contained a "no-strike clause" and the Supr held that the issue of whether or not that clau a sympathy strike was arbitrable, that is, whet the broad no-strike clause covered any and all s work whether related to disputes with managem Insofar as the underlying dispute, the Supr adopted the reasoning and decision of the Secc and found that it was not arbitrable. The Secc had held "the strike at issue in the instant case a grievance with *Buffalo Forge*, but instead i manifestation of the striking workers deferenc employees' picket lines." (517 F.2d 1207 at 12 1975), and further observed:

> a strike not seeking to pressure the e yield on a disputed issue is not an attempt vent arbitration machinery established by bargaining agreement. Accordingly, it d lence to the federal pro-arbitration policy federal courts to refrain from enjoining s *Buffalo Forge Co., supra.*, 428 U.S. at p. tions omitted).

In this the Court of Appeals affirmed the Dis which had refused to issue an injunction precis the underlying dispute was not arbitrable. *Bu Co.* v. *United States Steel Workers of America*, 386 F.Supp. 405 (W.D.N.Y. 1974).

D

McGrath alleges, in connection with the IL wide refusal to load grain ships for Russia a against the Soviet invasion of Afghanistan, t disputes in the Ports of Houston, New Orlean ville, Norfolk and Philadelphia have been submit tration and that arbitrators in those cases h mously found against the Union, and that oth Courts have uniformly issued restraining orde ing work stoppage. Two District Court cases brought to this Court's attention, i.e., *Jackso Terminals, Inc.* v. *ILA* (M.D. Fla., Jackson Docket No. 80-81-CV-J-B); and *New Orleans Association* v. *General Longshoreworkers,* (Docket No. 80-0335). However, it appears that Management Agreement in both those cases separate and distinct no-strike clauses. In the J case the no-strike clause provided:

> During the term of this agreement, the agrees that there shall be no lockout of th of the Union, and Union agrees that there be any strike of any kind whatsoever, wa pension of work, curtailment, or limitation tion, slow down, or any other interruption o total or partial, of the employers' operati cause whatsoever. . . . Paragraph 15(b)

In the *New Orleans* case the no-strike clause

> (a) No strikes, no lockouts—there will be work stoppages or shall there be any lockou

The Court in *New Orleans* granted a prelimin tion against the Longshoremen's Locals prev work stoppage in connection with the loading o

of grain destined for the Soviet Uni
her opinion states:

> The Unions contend that the nc
> the collective bargaining agree
> work stoppage of a political na
> dispute exists between the empl
> the arbitrators exceeded their a
> the defendant unions to load carg
> This Court decides otherwise. T
> ing agreements in this case cont
> equivocal no-strike and no-wo
> There are no exceptions to this p

The difference between the collecti
ments in the *New Orleans* and *Jacks*
one now before this Court is obviou
agreement contained an independent
not to strike. The promise was not
arbitration. In *Jacksonville* it was
agreement"; in *New Orleans,* it wa
will be no strikes"; in *Buffalo For*
conditional "there shall be no strike

It is significant that the Union agr
case is not in the form of a sepa
promising not to interrupt or refus
and all circumstances, but is an agr
work once a matter involving interpr
of the provisions of the agreement i
tion for adjustment or decision.

E

A Union can be compelled to arbi
from striking only because it has ag
putes by the former method rathe

Boys Markets v. *Retail Clerks Union*, 39
1583, 26 L.Ed. 2d 199 (1970). The reli
of specific performance of a promise
than to strike. However, where, as i
there has been no such promise, the C
these remedies.

Here, the only promise not to strike
arbitration is pending. If there is n
trated, there is no obligation not to str
bargaining agreement in the case at ba
any broad, independent no-strike prov
Union has committed itself generally n
the life of the agreement. Rather, the
only that there will be no work stop
disputes are being arbitrated".

As in *Buffalo Forge*, the grievance
Afghanistan invasion—is clearly not wi
clause. To hold that the employer itse
claiming that the no-strike clause was be
an arbitratable dispute, thus, triggering
would be circular reasoning. As the S
in *Buffalo Forge* "if a strike not seek
grievance is enjoinable, then the policy o
is virtually obliterated." 517 F.2d at
Fifth Circuit observed in *Amstar Cor*
Meat Cutters and Butcher Workmen
AFL-CIO, 468 F.2d 1372 (5th Cir. 19
difficult to conceive of any strike whic
joined." 468 F.2d at 1373.

The great difference between the cas
litigation involving similar sympathy
other litigation involving the ILA's refu
bound for the Soviet Union, lies in the c
agreements themselves. Unlike the situ
there is here no independent promise

strike. There is only a pro
arbitration is pending, which
arbitrable issue.

The contract in this case
tional promise not to strike f
The Union promises only to
tion is pending. There is h
to which arbitration applies.
tration is denied as is the re

IT IS SO ORDERED.

Dated: March 6, 1980
Syracuse, New York